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AUTHOR Burns, Arnold I.
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ABSTRACT

The address discusses the meaning and structure of the United States Constitution and how it relates to the importance of citizenship. The Constitution's history is sketched in a brief discussion of its creation, founders, theoretical roots, and the concept of delegation of powers. The idea of limited governmental powers rests on an informed citizenry that is both aware and responsible; hence, if Constitutional freedoms are to survive, citizens must understand not only the rights but the responsibilities of citizenship. In closing, the address highlights a project intended to raise the level of public awareness of the rights and responsibilities of a constitutional government and to encourage United States youth to recognize the distinction between the two. A merging of these two concepts is needed to help forge a sturdy foundation for republican government. (TRS)

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Department of Justice

ADDRESS

OF

THE HONORABLE ARNOLD I. BURNS
ASSOCIATE ATTORNEY GENERAL

AT THE

GIBRALTER FORUM

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FRIDAY, MAY 2, 1986
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Today I would like to talk to you about the United States Constitution. As you well know, we will celebrate its 200th birthday on September 17, 1987. This is an especially important time to pause and reflect on what this great document means to us -- and to the world. For as Alexander Hamilton said in introducing the first essay of The Federalist, "it seems to have been reserved to the people of this country ... to decide the important question whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force."

Needless to say, it seems we have decided that question with an emphatic example. But now we need to think about how best we might, as Lincoln said, serve to perpetuate these great political institutions that have been our birthright.

The key, I believe, to our past, current, and future success lies in the great design of our Constitution. Each of our three branches of government -- the Executive, Judicial and Legislative -- is devoted to the Constitution. It guides us in addressing the public issues of our day -- both domestic and international. It is precisely this bonding of institutions to the document that has made our constitutional history so impressive.

At the start, I wish to disclaim any special expertise as a Constitutional scholar. I am not a theoretician about constitutional issues, but a member of our great team of Department of Justice lawyers, who, under the leadership of Attorney General Meese, practice constitutional law every day.

Our Constitution is, of course, a written document. While our country is still a young one, we do hold the world's record for the longest number of years of any republican or democratic government under a written Constitution in the history of the world. That in and of itself tells us something -- by simple extrapolation then we know that the system of government spawned in 1787 by the draftsmen and ratifiers of our Constitution provides for a ship of state which is stable, steady, adaptable, and maneuverable.

To understand the Constitution and the government it established, one must go back to its creation. One must appreciate the Framers' great design that has enabled us, as a free people, to navigate relatively smoothly between the Scylla of anarchy and the Charybdis of despotism, those tendencies most destructive of free governments. In order to do this, we need to remember a few fundamental facts.

First, we should recall that the Founders were a disparate group: planters and farmers representing distinctly agrarian interests; merchants and bankers representing trade and commerce; mariners who earned their livelihoods at sea representing maritime interests; and professional people working to sort out societal problems. And, lest it be forgotten, a good many lawyers. They came from different geographical locations representing thirteen independent and sovereign states, each jealous and prideful about that independence and sovereignty. People from New York (my home state) were quite different from Massachusetts men, who were different from South Carolinians, who

were different from Virginians, and so on.

Second, we need to keep in mind that the Constitution was born of the Revolutionary War -- our War for Independence -- fought by men who passionately hated any form of oppression and tyranny. These veterans had waged a long and difficult war most of the world thought unwinnable. And they had won. They were unswervingly dedicated to the proposition, as Thomas Jefferson had put it, that they must be resolved to die free men rather than live slaves. These rugged individualists were thoroughly ingrained with an insatiable thirst for liberty and freedom. They wanted to control their own personal destinies and not rely on or permit others to do it for them. To this day, New Hampshire's license plate proudly, defiantly, proclaims: "Live Free or Die."

Finally, we do well to keep in mind that the Founding generation knew from hands-on experience that it was essential to have a strong national government. These were not "closet" theorists, as James Madison said. They were men greatly experienced in the conduct of public affairs. General Washington lived through the brutal winter of 1776-77 at Valley Forge with a rag-tag army -- ill clad, poorly fed, under-armed and inadequately sheltered because of the absence of a national authority to tax and then to provision them. As members of Washington's staff at Valley Forge were Colonel Alexander Hamilton and Captain John Marshall, later important Federalist spokesmen for a strong national authority and still later, of course, Secretary of the Treasury and Chief Justice of the

Supreme Court of the United States, respectively.

But it was not only the wartime experiences that taught the necessity of a strong government. The Articles of Confederation, the loose structure of governance under which the thirteen states confederated, had failed because each of the states and remained sovereign and insisted on going its own way in matters of trade and commerce -- even in the conduct of foreign affairs. In fact, the Articles made no pretense of being a government at all. That first American compact boasted only of forming "a firm league of friendship" among the autonomous states.

The Articles had proved simply inadequate to the exigencies of the Union. With a nation in such disarray, delegates from each state were called to Philadelphia to revise the Articles of Confederation -- not to prepare a new Constitution. Nonetheless, that is precisely what they did.

The delegates to Philadelphia, led by such men as James Madison, James Wilson, and Gouverneur Morris, came up with a magnificent and a brilliant scheme by which a strong central authority was established; sovereignty of the states was preserved; and certain individual liberties of the people guaranteed. And our Constitution remains what the Framers hoped it would be, what Abraham Lincoln once called "the last, best hope of earth" to the cause of freedom. Often imitated, never completely equaled, our Constitution is unique. It provides for a form of government at once limited and energetic. It possesses the powers requisite to govern, but only within clearly defined lines and limits.

The most basic constitutional division of governmental powers is between the National Government and the governments of the several States. Those powers given to the National Government are enumerated in the Constitution. Powers not allocated to the national government are reserved to the state governments or to the people. Further, a Bill of Rights was appended to the Constitution to guarantee individual liberty to our citizens against the national government. And the Tenth Amendment made the division of sovereignty between nation and states clear. This system of allocated powers among the national government, our now-50 state governments, and the people, we call "Federalism." This was the scheme which, along with separation of powers, that Madison celebrated in The Federalist as providing a double security to the rights of the people.

The second basic constitutional allocation of power occurs at the national level. Governmental power granted by the Constitution is then separated between three distinct, disparate but coordinate branches of government. Mechanisms provide for checks and balances among the three branches so they can keep each other under control and avoid governmental excesses -- such things as the Legislature's control of the purse strings, the Judiciary's power to interpret the laws, and the President's power of a qualified veto, among others. This is our justly celebrated theory of "Separation of Powers."

And so, a system of governmental power at the national level was created which would be energetic enough to be effective, but still subject to limitations and restraints, limitations and

restraints that are the result of institutional contrivances. It is my thesis that the structure of the Constitution itself is our greatest bulwark for the protection of freedom and liberty. They do not depend upon the good will of those who wield power to restrain themselves. As Madison said, the government is, by the design of the Constitution, "obliged to control itself."

In attempting to uncover these theoretical roots of our constitutional order, we are fortunate that the Framers kept records of their proceedings, and that there were many contemporary accounts of what they were doing and what they intended to do in connection with proposals, in connection with drafting the Constitution, and in connection with the ratification of the thirteen separate states. As a consequence, we have considerable insight into what the Framers had in mind.

One thing is clear -- the Constitution was to be supreme. It could by procedures provided therein be amended, but until amended, it was to be deemed permanent and unchangeable. As one of our prominent American scholars, Professor Walter Berns (regrettably, no relation of mine) put it, the Framers' object was not to keep the Constitution in tune with the times but rather to keep the times in tune with the Constitution

We at the Justice Department, under the leadership of Attorney General Meese, are endeavoring to be faithful to our founding heritage. We are attempting to do everything we can within the framework of law to ensure that the system of Federalism remains vital, effective and continuing and that the principle of Separation of Powers is maintained inviolate. We

are totally committed to do this.

Our system of federalism and our constitutionally mandated scheme of separated powers are essential to maintaining a limited national government. For having such a federal government of limited, enumerated and checked powers precludes any all-pervasive, encroaching national power. But such a system is not easy. It requires a great deal of effort to maintain. At bottom, it presupposes an active, interested, and involved citizenry. For every task denied the national authority under our Constitution falls inevitably to the states, to the communities, and ultimately to the people themselves.

The idea of limited government, properly understood, is not only a government safe for individual rights and liberties. Any limited government -- a constitutional republic such as ours especially -- must invest its citizens with a sense of public purpose. In fact, a government limited in scope presupposes a very basic sense of citizen responsibility. To have free, popular government, it is necessary to have an informed people, a people both aware of, and ultimately responsible for, decisions affecting the life and well being of the community. It rests upon the Founders' confidence, as Madison expressed it, that there is "sufficient virtue among men for self-government."

But too frequently during the past several decades the popular emphasis, reinforced constantly by the media and in our various forms of entertainment, has been on the privileges, rights, prerogatives and the licenses of American citizenship, while precious little attention has been paid to the

responsibilities of citizenship.

We are, however, beginning to see indications that attitudes are changing. The "me generation" is beginning to look outward, seeing individual liberties in the broader context of the society as a whole. Popular journals inform us that patriotism is again in vogue. Educators and political philosophers of all stripes are advocating the reintroduction of instruction in civic virtue into school curricula. Secretary of Education Bill Bennett, for example, is leading the move to put traditional values and the great books back in our classrooms.

Those of us who are born within the boundaries of this nation are automatically American citizens. But obviously, that does not mean ipso facto that we have an understanding of the responsibilities of that citizenship. It's like becoming a parent. It's fairly easy. But becoming a good and effective parent requires hard work and responsibility. So, too, each of us must develop an understanding of the special obligations associated with living in a free society. In fact, all too often we observe that immigrants to our shores have a keen appreciation of the freedoms we enjoy in this magnificent land of ours and that such appreciation becomes more and more attenuated with each succeeding generation until often citizenship and the freedom it affords is taken for granted. Our faithful obligation must be to pass on the blessings of liberty to those who follow us -- in the words of John Jay "to teach the rising generation to be free". It is also our obligation to teach each rising generation to accept the responsibilities they owe to their country and to

their fellow citizens.

It doesn't take a great deal of thought to realize that a society of freedom bereft of responsibility will inevitably and ineluctably lead to anarchy. History is our infallible guide to this truth. "Liberty", Daniel Webster said, "exists in proportion to wholesome restraint." American liberty is and must be what Richard Henry Lee once called "ordered liberty." Its foundation is and must be a citizenry which understands and accepts the delicate but necessary balance of rights and responsibilities. To upset that balance is to invite the same fate that Edward Gibbon described befalling an earlier experiment in democracy.

> In the end more than they wanted freedom, they wanted security. When the Athenians finally wanted not to give to society but for society to give to them, when the freedom they wished for was freedom from responsibility, then Athens ceased to be free.

George Will, in a 1983 essay entitled, "The Meaning of Freedom" for which he won the coveted George Washington Honor Medal from Freedoms Foundation, said it this way:

> I have a strong sense that things go wrong in America because of certain wrong ideas about freedom and the political order and what we owe to our society. I believe that we have for too long

> subscribed to the belief that freedom is the absence of restraints imposed by others. And I believe that a natural corollary to that erroneous belief is the erroneous belief that government exists simply to facilitate, to the maximum extent possible, the unrestrained enjoyment of private appetites. The doctrine of self-interestedness is self-fulfilling. Treat people as being purely self-interested and, sooner or later, you get people capable of nothing higher. We need to recur to the politics of exhorting people and, indeed, to laws that stipulate and embody the principle that we, like Socrates, are the creatures of our laws, and as they give us life and character and freedom and restraints and virtues, so too we have a debt to pay back.

Now how do we go about doing this?

One way is the project undertaken by Freedoms Foundation which has inaugurated a new Center for Responsible Citizenship. The first project, which took a year and a half, was the drafting a Bill of Responsibilities to sit side-by-side with our venerable Bill of Rights. As I have said people across our nation are aware of the <u>rights</u> in our free democratic society. And it is high time we raised the level of consciousness about the correlative <u>responsibilities</u> of citizenship in this great democratic land of ours. This is one of the best ways to achieve this object.

Freedoms Foundation's objective is to place this Bill of Responsibilities in the hands of every school child in America. By this method we can inculcate in our next generation those values most necessary to the maintenance of our limited and popular form of government. By encouraging the young to recognize that such notions as respecting the property of others, obeying the laws, and being sympathetic and helpful to fellow citizens, we make an important contribution towards recovering the basis of our political freedom. America will once again rest upon that sturdy foundation of republican government, the idea -- the belief -- that we are a community of citizens each with a responsibility to each other as well as our nation.

Rights and responsibilities must merge -- a fusion of kindred abstracts which, when taken together, constitute the sturdy bedrock of American tradition. I think we here know what that tradition is. It is freedom, freedom of the everlasting sort. Only a freedom such as this, a freedom which embodies both parts of the whole -- rights and responsibilities -- lives up to the standards of free government established by the framers of our great Constitution.

Thank you.

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